

NO. PD-0048-19

IN THE
COURT OF CRIMINAL APPEALS OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
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DEANA WILLIAMSON, CLERK

THOMAS DIXON,
Appellant-Respondent,

v.

THE STATE OF TEXAS,
Appellee-Petitioner.

**APPELLANT'S REPLY TO STATE'S RESPONSE OBJECTING
TO APPELLANT'S MOTION TO STAY MANDATE**

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Thomas Michael Dixon, the Appellant in the above styled and numbered cause, submits this reply to the State’s response objecting to his motion to stay mandate under Texas Rule of Appellate Procedure 18.2, pending a Petition for Certiorari to the Supreme Court of the United States.

This Court is authorized, pursuant to Rule 18.2 of the Texas Rules of Appellate Procedure, to enter a stay of its mandate pending the filing of a petition for writ of certiorari to the Supreme Court of the United States. TEX. R. APP. P.

18.2 (providing for stay of issuance of mandate pending United States Supreme Court disposition of petition for writ of certiorari.) Dr. Dixon's capital murder conviction and the accompanying 4th and 6th Amendment Violations raise a substantial question of law worthy of certiorari. In cases where a party seeks a stay of the Court's mandate pending petition to the Supreme Court, this Court has previously found a stay appropriate and ordered same. *Hill v. State*, 146 Tex. Crim. 333 (TEX. CRIM. APP. 1943); *Akins v. State*, 148 Tex. Crim. 523, 526 (TEX. CRIM. APP. 1944); (see also *Faulder v. State*, 612 S.W.2d 512 (TEX. CRIM. APP. 1980)).

Dixon is afforded the right to seek appellate relief from his conviction, and should not be retaliated against for pursuing such relief. The Supreme Court recognizes that "punish[ing] a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort" *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). Denying Appellant's stay of this Court's mandate would in essence deprive him of his right to pursue a direct appeal and punish him for petitioning certiorari to a higher court.

Further, the State in its brief opposing Appellant's motion for stay, claims that Dixon is not entitled to a stay and should not remain out on bail under TEX. CODE. CRIM. PRO. art. 44.04(h). The State contends that because this Court issued an opinion on its Petition for Discretionary Review, there was a final determination. However, this is not the case because there is a pending rehearing

on the matter and a mandate has not yet issued. *See Jones v. State*, 711 S.W.634, 636 (Tex. Crim. App. 1986) (“The law is settled that a conviction from which an appeal has been taken is not considered to be a final conviction until the conviction is affirmed by the appellate court and that court’s mandate of affirmance becomes final.”). The opinion of the Court of Criminal Appeals (“CCA”) is not final and the matter is still currently pending before the CCA. Therefore, Dixon is still eligible for bond on appeal under Tex. Code. Crim. Proc. Art. 44.04(b).

If Dixon were returned to TDCJ while on petition to the Supreme Court of the United States, he would face irreparable injury because the 7th Court of Appeals has reversed his conviction. His return to TDCJ would place a man whose conviction has been reversed back in custody. Dr. Dixon should remain out of custody pending Supreme Court review of his points on certiorari.

A final determination by the CCA has not yet issued and Dixon’s claims on certiorari are not frivolous. The Appellant is constitutionally entitled to a stay of these proceedings so that he may raise the vitally important issues in his petition for writ of certiorari and so the Supreme Court of the United States can properly consider them.

WHEREFORE PREMISES CONSIDERED, Appellant prays this Honorable Court grant him a stay of the mandate in this cause pending his petition for writ of certiorari to the Supreme Court of the United States pursuant to Rule

18.2 of the Texas Rules of Appellate Procedure. Defendant further prays for any and all other relief this Court deems fit in law or equity.

Respectfully submitted,

GOLDSTEIN & ORR

By: /s/ Cynthia E. Orr
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appellant's Brief has been electronically transmitted to the Post-Conviction Division of the Lubbock County District Attorney's Office as a registered participant of the e-

FileTexas, filing system, on this the 19th day of March, 2020 and mailed to Appellant.

By: /s/ Cynthia E. Orr
Cynthia E. Orr

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